

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRETT EUGENE THOMAS,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

CASE NO. C10-5710RJB

ORDER ADOPTING
REPORT AND
RECOMMENDATION

The Court having reviewed the Report and Recommendation of the United States Magistrate Judge J. Richard Creatura (Dkt. 21), objections to the Report and Recommendation (Dkt. 22 and 24), petitioner's application for a Certificate of Appealability (Dkt. 24-1), and the remaining record, does hereby find and **ORDER**:

- (1) The court has conducted a *de novo* review of the record. Petitioner contends that the Report and Recommendation did not address his second double jeopardy claim: whether imposing a sentencing enhancement constitutes double jeopardy because the elements of the crimes of which petitioner was convicted already include being armed with a deadly weapon as an element of the crime. Dkt. 1-2, at 15-19; Dkt. 24, at 2. Pursuant to *Missouri v. Hunter*, 459 U.S. 359, 368-69 (1983), this double jeopardy claim is without merit. Petitioner's other double jeopardy claim, whether multiple deadly weapon enhancements for one weapon violate double jeopardy, was addressed by the Magistrate Judge; the court concurs with the analysis and recommendation of the Magistrate Judge on that claim. The court also agrees with the conclusion of the Magistrate Judge that petitioner's due process claim is unexhausted and procedurally barred. Finally, an evidentiary hearing is not warranted. Accordingly, the court **ADOPTS** the Report and Recommendation (Dkt. 21).

- (2) The petition for writ of habeas corpus is **DENIED**.

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- (3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, a Certificate of Appealability is **DENIED** with respect to all claims asserted by petitioner in his habeas petition. Petitioner's Application for a Certificate of Appealability (Dkt. 24-1) was considered in conjunction with his objections. A separate application is not necessary and is accordingly **DENIED** as moot.
- (4) The clerk is directed to send copies of this Order to Petitioner, and the Hon. J. Richard Creatura.

DATED this 21st day of March, 2011.



ROBERT J. BRYAN
United States District Judge